

E-299, 132/SA-89-136DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, REQUIRING THE CITY OF ROCHESTER TO CEASE AND DESIST FROM PROVIDING SERVICE, AND TO SHOW CAUSE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve Certain Recently Annexed and Platted Undeveloped Lands Within the City of Rochester Known as Viking Hills Third Subdivision and North Park Third Subdivision

ISSUE DATE: May 23, 1989

DOCKET NO. E-299, 132/SA-89-136

ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, REQUIRING THE CITY OF ROCHESTER TO CEASE AND DESIST FROM PROVIDING SERVICE, AND TO SHOW CAUSE

PROCEDURAL HISTORY

In December, 1988 the City of Rochester (City) filed an application with the Minnesota Public Utilities Commission (the Commission) to adjust its service area to include all of the areas it has annexed since 1974 in its service area and to determine compensation for these areas (Docket No. E-132, 299/SA-88-996). The areas involved in the instant matter, the Viking Hills Third Subdivision and the North Park Third Subdivision, are included in that application.

On March 7, 1989, the City submitted an application to the Commission requesting authority to provide service to the Viking Hills Third Subdivision and the North Park Third Subdivision while compensation is being determined. The City had recently annexed these areas (August 11, 1988 and June 21, 1988 respectively) which are in the exclusive service territory of People's Cooperative Power Association (People's or the Cooperative).

The City stated that there are no current customers in the areas in question, but that the areas will be developed soon and will need electric service. The City has facilities in place at the boundaries of the areas and is prepared to serve the new developments. Further, the City stated that the differences between its system and People's would result in high changeover costs if the Cooperative served the new developments

People's responded to the City's application on April 3, 1989, stating that it had facilities in place to serve the area and refuted the City's claims that the facilities of the two utilities were not compatible.

The Commission issued a notice establishing a comment and reply period, and requested parties to address issues of unnecessary duplication of facilities, the public interest, and whether there were any material facts in dispute requiring resolution in a contested case proceeding.

Comments were received from the City, People's, the Department of Public Service (Department or DPS) recommending that the Commission investigate interim customer costs and construction standards, and the Minnesota Municipal Utilities Association (MMUA) supporting the City. Reply comments were received from the Minnesota Rural Electric Association (MREA) supporting People's, and the parties listed above.

On May 17, 1989, People's filed an affidavit from its director of engineering and operations, Paul E. Melby, which stated that the City had extended service into the North Park Third Subdivision and provided power to a building site.

The Commission met on May 18 and 23, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must determine whether People's or the City should provide electric service to the Viking Hills Third Subdivision and the North Park Third Subdivision during the time that compensation is determined and has been paid by the City to People's.

Minn. Stat. § 216B.44 (1988) governs this proceeding. It provides that when a municipality which owns and operates an electric utility extends its corporate boundaries through annexation or consolidation, or extends its service territory within its exiting boundaries the municipality shall thereafter provide electric service to these areas unless the area is already receiving electric service from an electric utility. If so, the municipality may purchase the facilities of the electric utility serving the area. The statute sets guidelines for the purchase and sale of the facilities. Further, if the municipality and the utility cannot agree on a purchase price, the statute provides that either can petition the Commission to determine the appropriate terms for the sale. The statute provides that after notice and hearing the Commission can determine the terms of the sale. The law lists factors for the Commission to consider in making its determination. Minn. Stat. § 216B.44 (1988) then states:

Until the determination by the commission, the facilities shall remain in place and service to the public shall be maintained by the owner. However, the electric utility being displaced, serving the annexed area, shall not extend service to any additional points of delivery within the annexed area if the commission, after notice and hearing, with due consideration of any unnecessary duplication of facilities, shall determine that the extension is not in the public interest.

In cases involving these same parties, the Commission has addressed the rights of a municipality to serve recently annexed areas which are receiving electric service from an electric utility serving the

area while compensation is being determined.

The Commission reiterates its findings that Minn. Stat. § 216B.44 gives an eventual statutory preference for a municipality which owns or operates an electric utility to serve persons within that municipality's corporate boundaries. However, the Commission finds that that preference arises only after compensation is determined and paid. It does not operate at this stage in this proceeding.

At this stage in this proceeding, prior to extending service to the Viking Hills Third Subdivision and the North Park Third Subdivision the City must show that it is not in the public interest for People's to extend service to them. The City has failed to make that showing. The City has not proven to the Commission's satisfaction that the Cooperative cannot provide adequate service to the areas in question, that the cost of extending or providing that service is unreasonable, or that People's facilities are so unlike the City's facilities that they could not reasonably be integrated into the City's system. Further, the City has argued that it should be allowed to serve because the statutes give municipalities a preference over other utilities to serve within their corporate boundaries once compensation is determined and paid. While Rochester has repeatedly stated that it will pay reasonable compensation to People's, the Commission notes that the statutes do allow a municipality to choose not to serve if it determines that the amount of compensation is too high. The Commission concludes that the City of Rochester's request for interim service should be denied and that People's should continue to serve and extend service to new customers in the Viking Hills Third Subdivision and the North Park Third Subdivision until compensation has been determined and paid.

Furthermore, to effectuate the intent of Minn. Stat. § 216B.44 (1988), the Commission will order the City to immediately cease and desist from providing new service on and after the date of this Order to the Viking Hills Third Subdivision and the North Park Third Subdivision within People's assigned exclusive service area and to any other point where such service has not been authorized.

The Commission shall also direct Rochester to cease and desist from providing unauthorized electric service within People's assigned exclusive service area where such service was installed on or after March 7, 1989, as soon as service can be provided by People's.

To avoid any customer confusion, the Commission will require the City to refer all future requests for new service outside of its assigned service territory to the utility entitled to serve that territory under law.

Finally, allegations have been made in the May 16, 1989 affidavit of Paul E. Melby that the City has extended service and is providing electricity to the North Park Third Subdivision. The Commission finds that the allegations made in the affidavit, if true, would constitute violations of Minnesota law and Commission Orders. The Commission will order the City to:

1. show cause why it should not be found to have knowingly and intentionally violated Commission Orders in In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester, Docket No. E-132, 299/SA-88-650 and

Minn. Stat. §§ 216B.40 and 216B.44 (1988) as alleged in the affidavit noted above;

2. show cause why it should not be subject to the maximum penalties of Minn. Stat. §§ 216B.57 and 216B.59 (1988); and
3. identify all points within People's assigned service area where the City is serving and such service has not been authorized by the Commission and show cause why it should not be required to cease and desist from providing service at each of those points and remove all unauthorized facilities presently in place.

The Commission will order the City to respond in writing to this Show Cause Order within ten calendar days and appear before the Commission on June 14, 1989 at 1:30 p.m.

ORDER

1. The City of Rochester's request for authorization to provide interim service to the Viking Hills Third subdivision and the North Park Third Subdivision is hereby denied.
2. People's Cooperative Power Association, Inc. shall continue to serve and extend service to new customers in the Viking Hills Third Subdivision and the North Park Third Subdivision until

compensation has been determined and paid by the City to People's.

3. People's shall continue to serve and extend service to new customers in all areas which the City of Rochester has annexed or shall annex within the assigned service area of People's until compensation is determined and paid unless, after notice and hearing, the Commission shall find or has already found that it would not be in the public interest for People's to extend service.
4. The City shall immediately cease and desist from providing new service within People's assigned exclusive service area on and after the date of this Order where such service has not been authorized by the Commission.
5. The City shall cease and desist from providing electric service within People's assigned exclusive service area where such service was installed on or after March 7, 1989, as soon as service can be provided by People's.
6. The City shall refer all future requests for new service outside of its assigned service territory to the utility entitled to serve under law.
7. Within ten calendar days, the City shall identify all points within People's assigned service area where the City is serving and such service has not been authorized by the Commission and show cause in writing :
 - A. why it should not be found to have knowingly and intentionally violated Minn. Stat. §§ 216B.40 and 216B.44 (1988) and Commission Orders in Docket No. E-132, 299/SA-88-660;
 - B. why it should not be subject to the maximum penalties under Minn. Stat. §§ 216B.57 and 216B.59 (1988);
 - C. why it should not be required to cease and desist from providing service at each of the identified points; and

D. why all unauthorized facilities presently in place within the assigned service area of People's should not be removed.

8. A hearing on this matter will be held on June 14, 1989 at 1:30 p.m.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)